

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,**  
  
**WILLIAM E. WILKINSON,**  
**Bar No. 014702**  
  
**RESPONDENT**

No. 05-1384, 05-1914, 06-1987  
**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

Probable Cause Orders were filed on September 21, 2006 in Case No. 05-1384; on September 21, 2006 in Case No. 05-1914 and in Case No. 06-1987 on February 7, 2007. A three-count Complaint was filed on the February 26, 2007. Acceptance of Service of the Complaint was filed on March 12, 2007. Respondent requested an extension of time to file his Answer which was granted. Respondent filed an Answer on April 17, 2007. The Hearing Officer conducted a Case Management Conference on the April 27, 2007 and entered his Order on May 1, 2007, setting his procedural dates in a hearing for June 20, 2007. On May 3, 2007 a Notice of Settlement was filed by counsel for the State Bar and further requesting an additional thirty (30) days to file a Tender of Admissions and Agreement for Discipline by Consent. On June 1, 2007, the Tender of Admissions and Agreement for Discipline by Consent was filed together with a Statement of Costs and Expenses and a Joint Memorandum in Support of the Tender.

1 A hearing was conducted on June 20, 2007 with the Respondent being present  
2 together with his counsel, Thomas A. Langan and counsel for the State Bar, James L. Burke,  
3 being present. After reviewing the "Tender of Admissions and Agreement for Discipline by  
4 Consent." the undersigned Hearing Officer makes the Tender of Admissions and Agreement  
5 for Discipline by Consent" a part of this Report as Exhibit "A "

6 **UNCONTESTED FINDINGS OF FACT**

7 1. At all times relevant, Respondent was an attorney licensed to practice law in  
8 the State of Arizona, having been admitted practice in Arizona on October 24, 1992.

9 2. The Hearing Officer adopts the Findings of Fact proffered by the parties for  
10 Count One, File No. 05-1384, Count Two, File No 05-1914 and Count Three, File No. 06-  
11 1987 in their entirety. The Hearing Officer finds that the Respondent has violated the  
12 Professional Conduct of the Rules of the Supreme Court, specifically Rule 42, ERs 1.1, 1 2,  
13 1.3, 1.4, 1.5, 8 4(c) and 8.4(d).

14 3. It is clear from the stipulated facts and by the Respondent's admission that he  
15 has read all documents and agrees that they are true and that the facts stated in the Tender of  
16 Admissions are accurate.

17 4. It is the finding of the Hearing Officer's that Respondent violated the ethical  
18 rules by failing to provide competent representation to clients, failing to abide by this  
19 clients' decision concerning the objectives of the representation, failing to act within  
20 reasonable diligence and promptness in representing his clients, failing to consult with the  
21 client about the means by which the clients' objections were to be accomplished, charging  
22 fees that were contrary to the terms of the Fee Agreement he had entered into with the  
23 clients and failing to communicate the changes to the client. Respondent also made a false  
24 statement of fact or law to a tribunal, failed to make reasonable efforts to supervise the  
25 conduct of a non-lawyer assistant. It is the further finding that the Respondent engaged in  
26 conduct prejudicial to the administration of justice and engaged in conduct involving

1 dishonesty, fraud, deceit or misrepresentation.

2 5. In determining independently the appropriate sanction, the Hearing Officer  
3 considered the American Bar Association *Standards for Imposing Lawyer Sanctions*  
4 (*"Standards"*) and Arizona case law. The Hearing Officer reviewed the *Standards* 4.0, 6.0  
5 and 7.0 in considering the ultimate sanction.

6 **AGGRAVATING AND MITIGATING FACTORS**

7 The following factors should be considered aggravating in this case.

- 8 • *Standard 9.22(b)* – Dishonest or selfish motives; Respondent Wilkinson  
9 deceived the Rolencs regarding the supposed cost of the appeal so that the  
10 Rolencs would agree to forego the prosecution of the case.
- 11 • *Standard 9.22(c)* – There has been a clear pattern of misconduct as evidenced  
12 by the three Counts.
- 13 • *Standard 9.22(d)* – Multiple Offenses.
- 14 • *Standard 9.22(i)* – Substantial experience in law; the Respondent was  
15 admitted to practice law in 1992.

16 The Hearing Officer finds that following factors should be considered in mitigation:

- 17 • *Standard 9.22(a)* – Absence of prior disciplinary record.
- 18 • *Standard 9.32(c)* – Personal or emotional problems During the relevant  
19 period Respondent was involved in a relationship in which the other party  
20 made false allegations against Respondent which involved litigation against  
21 and by the Respondent.
- 22 • *Standard 9.32(e)* – Full and free disclosure to a disciplinary board or  
23 cooperative attitude toward the proceedings Respondent suffered for his  
24 conduct in Counts Two and Three and has fully cooperated with the State Bar  
25 since the commencement of these disciplinary proceedings.
- 26 • *Standard 9.32(l)* – Remorse Respondent has been contrite and sought

1 disposition of the matter prior to the filing of the formal Complaint. The  
2 Respondent evidenced at the hearing conducted by the Hearing Officer remorse  
3 as to his conduct.

4 Upon consideration of the aggravating and mitigating factors, the Hearing Officer  
5 finds that pursuant to the sanction recommended and for the period of suspension, this  
6 would be an appropriate result based on the various factors.

7 **PROPORTIONALITY REVIEW**

8 The Hearing Officer has reviewed various cases as to proportionality and has  
9 determined that a suspension of six months and one day is an appropriate sanction in this  
10 matter. Having reviewed *In re Finander*, *In re McDaniel*, and *In re Pulito*, the Hearing  
11 Officer feels that *In Re McDaniel* is the case most similar to Respondent's with regard to the  
12 violations and the *Standards* analysis which sets a suspension for six months and one day.

13 **RECOMMENDATION**

14 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public  
15 and deter future misconduct. It is also the objective of lawyer discipline to protect the  
16 public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708  
17 P 2d 1297 (1985).

18 In imposing discipline, it is appropriate to consider the facts of the case, the American  
19 Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of  
20 discipline imposed in analogous cases. The presumptive sanction in this case is suspension.

21 Upon consideration of the facts, application of the *Standards*, including aggravating  
22 and mitigating factors, and a proportionality analysis, this Hearing Officer recommends the  
23 following sanctions:

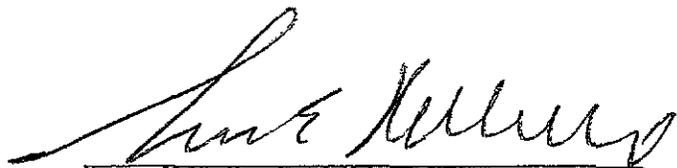
- 24 1. Respondent be suspended for a period of six month and one day.
- 25 2. Respondent should be placed on probation for two years and upon  
26 reinstatement under terms and conditions to be determined at that time of reinstatement but

1 to include participation in the Law Office Management Assistant Program (LOMAP).

2 3. Respondent shall pay the costs and expenses incurred in this disciplinary  
3 proceeding within 30 days of the Supreme Court's final judgment and order.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 29<sup>th</sup> day of August, 2007.

  
Lowell E. Rothschild  
Hearing Officer 7Z

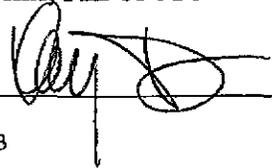
ORIGINAL of the foregoing  
emailed and mailed this ~~29<sup>th</sup>~~ day of August, 2007 to:

Disciplinary Clerk of the Supreme Court of Arizona  
Certification & Licensing  
1501 W. Washington, Ste. 104  
Phoenix, Arizona 85007-3231

Copy of the foregoing mailed this  
~~29<sup>th</sup>~~ day of August, 2007 to:

Thomas A. Langan  
Chandler & Udall, LLP  
4801 E. Broadway Blvd., Suite 400  
Tucson, AZ 85711  
Attorneys for Respondent

James L. Burke, Esq.  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016

By   
267663

1 James L. Burke, Bar No. 011417  
2 Staff Bar Counsel  
3 State Bar of Arizona  
4 4201 N. 24<sup>th</sup> Street, Suite 200  
5 Phoenix, Arizona 85016-6288  
6 Telephone (602) 340-7244

7 Thomas A. Langan, Bar No. 013585  
8 *Chandler & Udall LLP*  
9 4801 E. Broadway Blvd., Suite 400  
10 Tucson, Arizona 85711-3609  
11 Telephone (520) 623-4353  
12 Counsel for Respondent

13 **BEFORE A HEARING OFFICER OF  
14 THE SUPREME COURT OF ARIZONA**

15 **IN THE MATTER OF A MEMBER  
16 OF THE STATE BAR OF ARIZONA,**

17 **WILLIAM E. WILKINSON,  
18 Bar No. 014702**

19 Respondent.

Nos. 05-1384, 05-1914, 06-1987

**TENDER OF ADMISSIONS  
AND AGREEMENT FOR  
DISCIPLINE BY CONSENT**

(Assigned to Hearing Officer 7Z,  
Lowell E. Rothschild)

20 The State Bar of Arizona, represented by undersigned bar counsel, and  
21 Respondent, William E. Wilkinson, who is represented in this matter by counsel,  
22 Thomas A. Langan, submit this Tender of Admissions and Agreement for  
23 Discipline by Consent pursuant to Rule 56(a), Ariz.R.Sup.Ct., and the guidelines  
24 for discipline by consent issued by the Arizona Supreme Court's Disciplinary  
25 Commission.

1           The formal complaint in this matter was filed on February 26, 2007. No  
2 hearing has been held.

3  
4           Respondent conditionally admits to violating the ethical rules by failing to  
5 provide competent representation to client; failing to abide by his clients'  
6 decisions concerning the objectives of the representation; failing to act with  
7 reasonable diligence and promptness in representing his clients; failing to consult  
8 with the client about the means by which the clients' objectives were to be  
9 accomplished; charging fees that were contrary to the terms of the fee agreement  
10 he had entered into with the client; making a false statement of fact or law to a  
11 tribunal or failing to correct a false statement of fact or law previously made to the  
12 tribunal; failing to make reasonable efforts to ensure that the conduct of a non-  
13 lawyer assistant was compatible with the professional obligation of the lawyer;  
14 engaging in conduct prejudicial to the administration of justice; and engaging in  
15 conduct involving dishonesty, fraud, deceit or misrepresentation.  
16  
17  
18

19           Respondent agrees to accept a 6-month and one day suspension, and to be  
20 placed on probation for 2 years should he seek reinstatement, with specific terms  
21 and conditions of probation to be established at reinstatement but to include  
22 participation in the Law Office Management Assistance Program ("LOMAP").  
23 Respondent shall also pay the costs and expenses incurred in this disciplinary  
24 proceeding.  
25



1           4.     On or about August 2, 2005, Respondent filed with the court a  
2 "Request for Entry of Judgment", requesting that the court enter an order to  
3 enforce Respondent's attorneys' costs incurred while representing Ames. Ames  
4 largely disputed the amount of these costs. (To pursue a claim for costs against  
5 Ames, Respondent was required to bring a complaint seeking such relief.)  
6

7           5.     On or about October 3, 2005, the court entered an order that  
8 Respondent report to the State Bar of Arizona that he improperly filed the  
9 "Request for Entry of Judgment" against Ames.  
10

11           6.     Respondent engaged in conduct prejudicial to the administration of  
12 justice.  
13

14                                   **COUNT TWO (File no. 05-1914)**

15           7.     On or about April 2004, Albert Whittaker ("Whittaker") contacted  
16 Respondent regarding retention. Whittaker was the trust distribution beneficiary  
17 of a residence and was seeking to sell the residence. To accomplish the sale,  
18 Whittaker needed to file a final accounting with the probate clerk and thus, sought  
19 to retain Respondent to assist with the probate accounting.  
20

21           8.     Respondent agreed to assist with the accounting. On or about April 7,  
22 2004, Respondent and Whittaker entered into a retainer agreement which provided  
23 in pertinent part:  
24  
25

1 Client employs attorney and attorney agrees to represent  
2 client in filing his accounting regarding the estate. . . . and  
3 assistance in the sale of the real estate.

4 9. On or about June 29, 2004, Respondent filed a motion with the  
5 probate court to withdraw as Whittaker's counsel based upon Respondent's  
6 perceived lack of cooperation from Whittaker. In the motion to withdraw,  
7 Respondent specifically stated that he never agreed to conduct Whittaker's  
8 accounting for the real estate sale contradicting directly the terms of retainer  
9 agreement. Respondent never did file an accounting with the probate clerk. At  
10 hearing, Respondent would testify that he advised Mr. Whittaker that an  
11 accounting had not been filed. For purposes of this agreement, the State Bar does  
12 not contest Respondent's proposed testimony.  
13  
14

15 10. In the motion to withdraw, Respondent also represented to the court  
16 that Whittaker was never advised that Respondent had obtained an extension for  
17 him to file his accounting. However, Respondent's paralegal specifically informed  
18 Whittaker that an extension to file the accounting had in fact been obtained.  
19

20 11. Whittaker ultimately was unable to obtain refinancing to conduct the  
21 sale of the subject residence and it was eventually sold at a trustee's sale.  
22 Whittaker made a claim against Respondent for damages suffered due to the failed  
23 refinancing of the residence.  
24

25 12. Respondent failed to provide competent representation to his client.

1           13. Respondent failed to abide by his client's decisions concerning the  
2 objectives of the representation.

3  
4           14. Respondent, having direct supervisory authority over a non-lawyer,  
5 failed to make reasonable efforts to ensure that the person's conduct was  
6 compatible with the professional obligations of the lawyer.

7  
8           15. Respondent engaged in conduct that was prejudicial to the  
9 administration of justice.

10           16. Respondent engaged in conduct involving misrepresentation. For  
11 purposes of this agreement, Respondent admits that he negligently misrepresented  
12 the status of the representation and the extension to the court in Respondent's  
13 motion to withdraw.

14  
15                                   **COUNT THREE (File No. 06-1987)**

16           17. Respondent was retained by clients the Rolencs ("the Rolencs") to  
17 represent them in a negligence suit against a day care stemming from the death of  
18 the Rolencs infant child. According to the fee agreement, the Rolencs were to  
19 pay \$700 to Respondent to investigate the merits of the case, and if Respondent  
20 agreed to accept the case for litigation, he would bear any additional costs (and  
21 take the case on a contingency fee basis). Respondent charged the Rolencs the  
22 \$700 and decided to accept the case.  
23  
24  
25

1           18. Respondent prepared and filed a compliant on behalf of the Rolencs.  
2 Subsequently, Respondent requested \$3,000 from the Rolencs to retain an expert  
3 regarding the child's cause of death, contrary to the terms of the fee agreement.  
4 The Rolencs paid the money. The Rolencs also received \$1,000 from their  
5 insurance company for the child's funeral expenses. Respondent requested that  
6 the Rolencs place this sum in his trust account as an additional retainer, again in  
7 violation of the fee agreement.  
8  
9

10           19. Defendants in the lawsuit filed a motion for summary judgment  
11 alleging that the Rolencs had not established the cause of the child's death. In  
12 response, Respondent filed an affidavit from a pediatrician that failed to detail the  
13 basis for his conclusions. The court rescheduled the hearing on the motion for  
14 summary judgment to permit Respondent to cure the defect.  
15

16           20. In his supplemental response to the motion for summary judgment,  
17 Respondent failed to obtain a more detailed affidavit from the original  
18 pediatrician. Instead, he filed a pleading which made reference to conclusions  
19 made by other physicians, but did not attach these affidavits as exhibits.  
20

21           21. At the new hearing on the motion for summary judgment, Respondent  
22 failed to appear. He informed the court that he entered a stipulation with defense  
23 counsel for a continuance of the hearing. Defense counsel, however, never agreed  
24 to a continuance. The court imposed sanctions against Respondent, and granted  
25

1 the motion for summary judgment. At a hearing of this matter, Respondent would  
2 testify that his secretary/paralegal advised him that a continuance of the hearing  
3 had been granted. For purposes of this agreement, the State Bar does not contest  
4 Respondent's proposed testimony.  
5

6 22. During the course of the litigation, Respondent never deposed the two  
7 attending day care providers of the child at the time of the child's death (and, in  
8 fact, took no depositions). Respondent would state a hearing that he had  
9 scheduled depositions of the two individuals but canceled them prior to the  
10 hearing on the motion for summary judgment. For purposes of this agreement, the  
11 State Bar does not contest the Respondent's proposed testimony.  
12

13 23. In the appeal of the court's order granting summary judgment,  
14 Respondent cited to attached exhibits as support for certain facts in the "Facts"  
15 section of his opening brief as opposed to citing the record at the trial court level.  
16 Moreover, Respondent did not indicate where these exhibits were listed at the trial  
17 level.  
18

19 24. While the appeal was pending, Respondent advised the Rolencs that  
20 they should dismiss the appeal because if they did not prevail, \$30,000 to \$40,000  
21 in costs and defense attorney's fees could be levied against them.  
22

23 25. Respondent failed to provide competent representation to his client.  
24  
25









1 Original filed with the Disciplinary Clerk  
2 of the Supreme Court of Arizona  
3 this 1st day of June, 2007.

4 By: Mall

5 Copies of the foregoing mailed this 1st day  
6 of June, 2007, to:

7 Thomas A Langan  
8 *Chandler & Udall LLP*  
9 4801 E Broadway Blvd., Suite 400  
10 Tucson, Arizona 85711  
11 Counsel for Respondent

12 Lowell E. Rothschild  
13 Hearing Officer 7Z  
14 *MESCH, CLARK & ROTHSCHILD, PC*  
15 259 North Meyer Avenue  
16 Tucson, Arizona 85701

17 Copy of the foregoing hand-delivered this  
18 1st day of June, 2007, to:

19 Lawyer Regulation Records Manager  
20 State Bar of Arizona  
21 4201 N. 24th Street, Suite 200  
22 Phoenix, Arizona 85016-6288

23 by: Mall  
24 JLB:myb  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,  
William E Wilkinson, Bar No. 014702, Respondent

File No(s). 05-1384, 05-1914 and 06-1987

**Administrative Expenses**

The Board of Governors of the State Bar of Arizona has adopted a schedule of administrative expenses to be assessed in disciplinary proceedings, depending on at which point in the system the matter concludes. The administrative expenses were determined to be a reasonable amount for those expenses incurred by the State Bar of Arizona in the processing of a disciplinary matter. An additional fee of 20% of the administrative expenses is also assessed for each separate matter over and above five (5) matters due to the extra expense incurred for the investigation of numerous charges.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

**General Administrative Expenses for above-numbered proceedings = \$600.00**

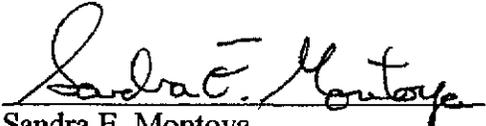
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

09/14/05	Review File; Sort documents; Prepare investigative report	\$113.75
09/06/05	Review File; Call to Pima County Superior Court	\$26.25
09/08/05	Travel to Tucson Superior Court	\$166.25
04/18/07	ACCURINT investigation; Calls to Whittaker	\$8 75

Total for staff investigator charges \$315.00

**TOTAL COSTS AND EXPENSES INCURRED \$915.00**

  
Sandra E. Montoya  
Lawyer Regulation Records Manager

5-21-07  
Date